

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

RONALD OELKERS,)	
Appellant)	
)	OSPI'S
vs.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW & ORDER
)	OSPI 53-83
BLAINE COUNTY HIGH SCHOOL)	
DISTRICT NO. 12, HARLEM)	
MONTANA,)	
Respondent.)	

* * * * *

This matter arises from a Notice of Appeal by Appellant through his attorney filed on July 12, 1983 from a Decision rendered July 1, 1983 by the Blaine County Superintendent of Schools John Moffat.

Both parties have submitted briefs in support of their positions and the State Superintendent now being fully informed as to the record, briefs and matters contained therein and the law makes these:

FINDINGS OF FACT

1. The Appellant, by and through his attorneys, Hilley and Loring, filed a Notice of Appeal with the State Superintendent on July 12, 1983 appealing a Decision of the Blaine County Superintendent of Schools dated July 1, 1983.

2. The parties have submitted briefs in support of their positions and this case has been deemed submitted by me.

3. Appellant served as a social studies teacher for the Harlem school district for seven years and has not taught physical education classes in the district.

4. Appellant graduated from Eastern Montana College in 1972 with a history major and a P.E. (physical education) minor.

5. The transcript reveals on page nine that Appellant has taken additional courses in political science, economics, sociology, Indian studies, drivers education and other education classes.

6. The transcript also reveals that Appellant has experience in coaching freshman basketball, junior high boys and girls basketball and grade school basketball for girls.

7. Appellant was notified by letter dated March 14, 1983 that his employment would be discussed at the regular meeting of the Board of Trustees on March 16, 1983. Petitioner attended the meeting.

8. On March 16, 1983 the Blaine County High School District No. 12 determined to terminate Petitioner's contract at the conclusion of the 1982-83 school term.

9. Appellant was given written notice of the Decision.

10. Appellant requested reasons for his termination and was advised by the superintendent of the school district that "Reduction of force was necessary and social studies is the area which can be reduced and still maintain the integrity of the program."

11. Appellant requested a hearing before the board of trustees. The hearing was held on April 6, 1983. The trustees reaffirmed their decision to terminate Appellant.

12. Of the three social studies teachers in the district, Appellant has the least seniority.

13. The Board of Trustees has maintained throughout this proceeding and Appellant has not objected to the necessity of a reduction in force at the school district.

14. The school district has retained a non-tenured teacher, with a physical education major, to teach physical education and coach boys varsity basketball.

15. There is nothing to indicate any additional accredited educational experience which Appellant has obtained in physical education since his graduation from Eastern Montana College in 1972.

The decision of the school district was appealed to the Blaine County Superintendent of Schools by Appellant and a hearing was held May 25, 1983 with a Decision rendered in favor of the school district on July 1, 1983 which is the subject of this appeal.

From the foregoing Findings of Fact the State Superintendent now draws these:

CONCLUSIONS OF LAW

1. This is a contested case before the State Superintendent of Public Instruction. Jurisdiction is in the State Superintendent of Public Instruction pursuant to Sections 20-3-107, 20-3-210 and 20-4-204(4) MCA.

2. There is no dispute that all procedural steps set forth in Section 20-4-204 MCA have been followed by the school district.

3. A school district has the right of a public employer to reduce the number of staff for budgetary reasons as set forth in Section 39-31-303(3) MCA.

4. Appellant did not and does not have tenure in the Blaine County High School District No. 12 in physical education because he has not taught physical education in that district.

5. The school district trustees and the county superintendent properly determined that a reduction in force was necessary in the area of social studies.

6. By retaining a non-tenured physical education instructor with a major in physical education and certification in physical education, the school district did not violate the tenure rights of Appellant.

7. Actual teaching experience in the district in the particular subject area is required for tenure.

8. No additional post-graduate study or continuing education is required to keep a minor certification in P.E. once it is granted by the Office of Public Instruction.

9. I have previously held in the case of Sorlie v. School District No. 2 affirmed by the Montana Supreme Court in _____ St. Rptr. _____ (1983) that an administrative level employee did obtain tenure in

that administrative position and that it was comparable for purposes of tenure because that teacher had more than four years actual teaching experience with the district in the field (elementary education) from which she was transferred to be an administrator.

From the foregoing Findings of Fact and Conclusions of Law the State Superintendent now enters his:

ORDER

1. The Decision of the Blaine County Superintendent of Schools, John Moffat, is affirmed.

DATED this 7th day of March, 1984.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

RONALD OELKERS,)
Appellant)
vs.)
BLAINE COUNTY HIGH SCHOOL)
DISTRICT NO. 12, HARLEM,)
MONTANA,)
Respondent.

MEMORANDUM OPINION
OSPI 53-83

* * * * *

This Memorandum is in support of my Findings of Fact, Conclusions of Law and Order entered this day. This case parallels that of Massey v. Custer County High School District OSPI No. 33-82 which was decided similarly by me and is now on appeal to the Supreme Court of the State of Montana. I will not repeat the factual background or grounds because it is contained in the Decision other than to say that the tenured teacher here, the Appellant, had a major in social studies and a minor in physical education. The school district determined that there was reason to reduce the number of social studies teachers and reduced Appellant because he had the least seniority. It is Appellant's contention that he should be retained as a physical education instructor because of his seven years of experience as a social studies teacher in the district. Appellant maintains that his tenure as a social studies teacher carries over to physical education even though he has not taught that subject in the Blaine County School District.

I respectfully disagree with the logic and conclusion argued by Appellant. Certification by the State Office of Public Instruction should not be an automatic grant of tenure in every minor subject if the teacher obtains tenure in his or her major area. The determination must and should remain with the local district after actual teaching experience. In this case, the teacher, Appellant, also has minors in political science, economics and is a few credits short of a drivers education minor. Should someone be granted tenure in any or all of these areas if he has no actual teaching experience in those areas but does in his major field? I again answer, no.

This teacher, Appellant, as every other teacher in Montana, has the opportunity to prove himself to his employing school district through four years of teaching experience. The fact that we initially certify a graduating teacher does not mean that we have evaluated his ability to perform to the expectations of any particular school district in Montana. Montana's Constitution has steadfastly maintained that local school districts have the right to supervise, manage and control their school including the hiring and firing of teachers. The Montana Supreme Court has consistently upheld that local control. See School District No. 12, Phillips County v. Hughes 170 Mont. 267, 272-283, 552 P.2d 328, 331 (1976) Yanzick v. School District No. 23 ___ Mont. ___ 641 P.2d, 431, 39 St.Rptr. 191, Donnes v. State of Montana ex rel. Superintendent of Public Instruction, and Board of Trustees, Carbon County

School District No. 1, _____ P.2d _____, 40 St.Rptr., 1834-1843
(1983).

The instant case arises from a reduction in force. No party has contested the implementation of the reduction in force or the fact that the reduction in force selected the social studies department for reduction. However, the actual implementation of the reduction in force yielded the dispute because of its impact on an area where the Appellant had no actual teaching experience. If the rule that was suggested by the teacher and the Montana Education Association was adopted here, it would effectively frustrate logical efforts for reducing teacher staff even though it is needed. The bumping privileges which these rules would implement would lead to teachers with no actual teaching experience replacing proven educators. Tenured teachers have experience in their particular field, but they do not confront the same issues in different subject areas or my office would not be asked to certify them in those different areas.

I ask that certification be viewed as a minimal threshold requirement for teaching and that it be very clear that in a situation such as that experienced by Appellant, no additional training or education is needed to maintain that minor certification throughout the balance of Appellant's career. If he keeps up his major certification by going back to school and taking additional educational courses in his major area, he will retain that minor certification no matter what he does or does not do educationally in that area.

Recently the Montana Supreme Court in the case of Sorlie v. School District No. 2, 40 St.Rptr. 1070 (1983) discussed the transfer powers of public employers found in Section 39-31-303(2). The instant case takes up the next sentence.

(3) relieve employees from duties because of lack of work or funds or under conditions where the continuation of such work be inefficient and non-productive;

In Sorlie, the Supreme Court for administrative purposes adopted the broad definition of tenure urged by my office. It permitted a school district to transfer a teacher with twenty-seven years of actual teaching experience in a district in elementary education and two years of experience as an administrator working with curriculum of elementary teachers back to her earlier job. The Court obviously considered the factual situation where a teacher is transferred back to an area where she had actual experience. The Court said:

The local economies are constantly changing; therefore, the school board must have the requisite authority to manage the school district in a financially-responsible manner. This includes eliminating certain programs and activities, and thereby terminating or reassigning personnel.

The Court also had this actual experience in mind when it stated on page 1075 "We also hold that if a position similar to that previously held by the reassigned educator is available after program reductions or changes, it must be offered to that person."

I strongly feel that if Appellant here or Mrs. Sorlie have an opportunity to teach in an area where they have had actual

teaching experience, then that position should be offered to them. In other words, if the social studies department is expanded, Appellant must be given an opportunity at that position. At the same time, neither he nor Mrs. Sorlie should be given the opportunity to bump another teacher in an area where they have had no actual experience.

DATED this 7th day of March, 1984.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

* * * * *

GENE A. & BETTYE I. SIPE)	
)	
APPELLANT,)	OSPI-6083
)	
VS.)	
)	
MALTA HIGH SCHOOL,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW AND ORDER
Respondent)	

* * * * *

Appellants have appealed the decision of the Phillips County Superintendent of Schools dated September 1, 1983. Pursuant to notice, briefs have been submitted by the parties and this matter is deemed submitted for decision. After review of the briefs and the file on exhibits in this matter, I now make these:

FINDINGS OF FACT

1. On the nights of February 24th and 25th, 1983, vehicles belonging to Malta school officials were vandalized by painting.
2. On March 4th and 5th, 1983, three staff members' cars were vandalized by painting.
3. These activities were reported by Malta High School officials to the local police department.